

THE HONBLE SRI JUSTICE GODA RAGHURAM

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W.P.No.13239 of 2006

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Date 11.09.2006

Between:
Baske Venkataiah.

..... PETITIONER

AND

District Collector, Warangal District and another.

.....RESPONDENTS

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THE HONBLE SRI JUSTICE GODA RAGHURAM

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W.P.No.13239 of 2006

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ORAL ORDER:

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Petitioner is aggrieved by the refusal of the respondents, in particular, the second respondent in referring his application dated 19-12-2005 [objecting to the determination in the Award No.D/1444/2002, dated 09-08-2005 that the petitioner is not the owner of an extent of Ac.0.17 gts., in Sy.No.25/D of Kadipikonda village and therefore disentitled to compensation for this extent of land acquired and also as to the market value] to the civil Court under Section 18(2) of the Land Acquisition Act, 1894 (for short 'the Act').

The petitioner claims to be the owner and to have been in possession of an extent of Ac.1.04 gts., in Sy.No.25/D. Ac.0.17 gts. This land was acquired in 2003 dispensing with enquiry under Section 5-A of the Act. Petitioner claims that his name is recorded as the owner of the land in question in all the revenue records. He asserts that he was not served notices under Sections 9 and 10 of the Act and since he was not residing in Vanamala Kanaparthi village, he had no knowledge of the acquisition proceedings. Petitioner submitted an application on 18-06-2004 and got issued a legal notice on 22-06-2004 and another on 13-07-2004 to the first respondent asserting his title to the land. As the respondents did not take any action on his several claim petitions, he filed W.P.No.13037 of 2004.

By the judgment dated 27-07-2004, the above writ petition was disposed of. This Court noticing that the award enquiry is yet to be

concluded, directed the second respondent herein to consider the petitioner's representation along with applications of other claimants at the time of apportionment or payment of compensation and if the dispute could not be resolved by the second respondent to the satisfaction of the rival claimants, directed that the same be referred under Section 30 of the Act (to the civil Court).

Aggrieved that the second respondent did not comply with the directions in W.P.No.13037 of 2004, the petitioner filed C.C.No.1229 of 2004. In the counter affidavit, in the contempt case, filed on behalf of the respondents, it was asserted that an award was pronounced on 09-08-2005 and the petitioner was informed that he had no right over the land in question and therefore there was no need to refer his objections under Section 30 of the Act to the civil Court. Petitioner specifically asserts the date of pronouncement of the award was not known to him and that he was not present when the award was passed. It is further asserted that even the notice under Section 12(2) of the Act was not served on him. It is also asserted that the second respondent had illegally and arbitrarily disbursed the entire compensation amount (to which the petitioner has an exclusive claim) to third parties without referring his claim to the civil Court. It is the petitioner's specific grievance that even his objection petition dated

19-12-2005 (specifically seeking reference of the civil Court under Section 18 of the Act both as regards his entitlement to compensation on the assertion that he is the owner of the land as well as to the quantum of the market value fixed) has not been referred to the civil Court.

Sri V.L.Surender Karan, claiming to be the Revenue Divisional Officer and Land Acquisition Officer, Warangal Division, Warangal District has filed a counter affidavit dated 14-07-2006. This counter

affidavit is claimed to have been filed on behalf of the first respondent as well. With regard to the claim of the petitioner that was the owner and in possession of the acquired land, the counter affidavit responds as under:

“In reply to the averments made in paras 2 to 5 of the petitioner’s affidavit it is submitted that it is true that the Draft Notification under Section 4(1) of the Land Acquisition Act was published on 31-08-2003 by invoking urgency clause for acquisition of lands at Kadipikonda and Madikonda villages of Hanamkonda Mandal for the purpose of construction of Road Over Bridge in lieu of L.C.No.59.A at K.M.324/1-2 in Kazipet Yard at K.M. 132/370 of Hyderabad-Hanamkonda road. After fixing the market value of the lands in question, notices under Sections 9 and 10 of the Land Acquisition Act were issued on 23-10-2003, 06-12-2003, 17-01-2004 and 27-04-2004 by fixing the date of enquiry on 15-11-2003, 24-12-2003, 17-01-2004 and 14-05-2004 served upon the persons interested in the lands to be acquired through the Mandal Revenue Officer, Hanamkonda. In response to the said notices, the interested persons have attended before this respondent and their statements were recorded and after satisfaction of the title held by the persons, the apportionment has been made. At that stage the petitioner herein has filed Writ Petition No.13037 of 2004 before this Hon’ble Court and this Hon’ble Court has disposed of the said Writ Petition on 27-07-2004 directing this respondent “to consider the representation of the petitioner along with the applications made by the claimants at the time of apportionment/payment of compensation and that if the dispute cannot be resolved by the Land Acquisition Officer to the satisfaction of rival claimants, the same may be referred to the Civil Court under Section 30 of the Act.” The said orders of this Hon’ble Court have been received by this Office on 29-07-2004. In obedience to the direction of this Hon’ble Court, this respondent has issued a notice on 30-07-2004 to the petitioner’s advocate to file the documentary evidence in support of the claim of the petitioner. The petitioner has filed the pahani extracts showing his name in the ‘pattadar column’ and residential houses (Nivasa grhamulu) in the ‘Occupation column’. Since the documents filed by the petitioner is not proving the title over the said land, the Assistant Director, Survey & Land Records, Warangal has been requested to depute the Inspector of Survey on the spot to find out the enjoyment of the land by the petitioner herein viz., Sri Baske

Venkataiah. The Assistant Director, Survey & Land Records, Warangal has got surveyed the land and submitted his report stating that the petitioner is having Ac.0-17½ gts., as shown by the petitioner during survey. The Assistant Director has forwarded the report submitted by the Incharge Inspector of survey who surveyed the land. The report of the incharge Inspector of Survey reveals that he has measured the land to an extent of Ac.0-17½ gts., as shown by the petitioner viz., Baske Venkataiah, in the absence of adjoining pattadars and occupants and the Incharge Inspector has only mentioned an extent of Ac.0-17½ gts., as per the possession shown by the petitioner. Hence an enquiry has been conducted on 14-03-2005 by issuing notice dated 24-02-2005 to all the interested persons/awardees in Sy.No.25 of Kadipikonda village. During the enquiry Smt. Billa Rajamma, W/o. Aga Reddy has deposed that she had purchased the land to an extent of Ac.0-35½ gts., in Sy.Nos.25 and 647 along with the existing well from Sri Baske Venkataiah, Son of Komuraiah, the petitioner herein, on simple sale deed (Sadabainama) on 20-01-1974 and subsequently sold away to Sri Matla Mysaiah, Son of Pochaiah on 26-05-1978. She further deposed that she has no right over the said land. Since Sri Matla Mysaiah who purchased the said land from Smt Billa Rajamma died, Sri Matla Yadagiri and two other legal heirs of late Matla Mysaiah have jointly deposed that his father had purchased the land in Sy.Nos.25 and 647 to an extent of Ac.0-35½ gts., from Smt Billa Rajamma @ Uma Devi, W/o. Aga Reddy, on 26-05-1978 through the simple sale deed and they are in possession of the land ever since the date of purchase. Further they have deposed that the said land was purchased by Smt Billa Rajamma @ Umadevi, W/o. Agareddy from Sri Baske Venkataiah, the petitioner herein, on 20-01-1974 through simple sale deed. While filing copies of the said two simple sale deeds and ryotwari pass book, they have requested to pay the land compensation to Sri Matla Kumaraswamy, Son of late Mysaiah. The petitioner herein has deposed that he has not sold away the land in Sy.No.25 to Smt. Billa Rajamma and that the simple sale deed filed is a fake document. Further the petitioner deposed that he is in occupation to an extent of 0-35 ½ gts., and out of which some land is coming under acquisition. The petitioner has requested to pay the land compensation for the land coming under acquisition. The other awardees of Sy.No.25 viz., Baske Babu, Son of Gattaiah, Baske Samuel, Son of Gattaiah, Bokkala Komuraiah, Son of Mallaiah, Mohd. Basheer, Son of Abdul Hameed (Advocate), Sri M.A.Saleem, Son of Mohd.

Afzal, Sri M.A.Sukoor, Son of Kareem, Sri Baske Ilaiah, Sri Baske Gattaiah, Son of Pochaiah, Smjt. Byri Anasurya, W/o. Yellaiah have also deposed that they know about the land of Smt Billa Rajamma which was sold away to late Matla Mysaiah and his sons are in possession of the land which is now coming under acquisition. Further it was revealed that the petitioner has already sold away the land in the year 1974 itself and the legal heirs of late Matla Mysaiah are now in possession of the land. The petitioner has no land in the village and residing at Vanamala Kanparthy village of Hanamkonda Mandal. Late Matla Mysaiah has constructed a house bearing No.6-69 in the part of the land in Sy.No.647 and the legal heirs of late Matla Mysaiah are now residing. It is also revealed that excluding the land coming under acquisition to an extent of Ac.0-17 gts., there is a vacant land to an extent of Ac.0-06 gts., at southern side in which a well is existing and an extent of Ac.0-03 gts., at northern side is now in the possession of the legal heirs of late Matla Mysaiah. It is also evident from the simple sale deeds filed by the legal heirs of Matla Mysaiah, Sri Baske Venkataiah had sold away the land to Smt Billa Rajamma @ Umadevi, W/o. Aga Reddy who in turn had sold away the land to Sri Matla Mysaiah, Son of Pochaiah through the simple sale deed dated 26-05-1978. It is also evident from the pahani extracts from the years 1979-80 and 1987-88 that Sri Baske Venkataiah and Komuraiah are the pattadars and Sri Matla Mysaiah is in possession of the land in Sy.No.25/D. As the legal heirs of late Matla Mysaiah are in possession of the land coming under acquisition to an extent of Ac.0-17 gts., in Sy.No.25, and the petitioner has no right to claim the compensation over the said Survey Number. Since the petitioner has no right over the land and the legal heirs of late Matla Mysaiah are the owners of the land to an extent of Ac.0-17 gts., in Sy.No.25, the matter could not be referred under Section 30 of the Land Acquisition Act.”

In response to the petitioner’s grievance that his application dated 19-12-2005 seeking reference to the civil Court has not been disposed of, the counter affidavit states as under:

“The petitioner has claimed the land with a mala fide intention. Further it is submitted that at the time of enquiry, the petitioner has been informed that the case will be decided on merits and the award will be pronounced. The Award was pronounced in the open Court on 09-08-2005. Thus the orders of this Hon’ble Court in W.P.No.13037 of 2004 dated 27-07-

2004 have been complied with by issuing notice to the petitioner and conducting enquiry in the presence of the petitioner and all other interested persons. The petitioner has filed an application under Section 18 of the Land Acquisition Act seeking to refer the matter to the Civil Court. The petitioner has sold away the land in question long back and he is not having any title over the said land. Notice under Section 12(2) of Land Acquisition Act was issued to the awardee viz., Matla Kumaraswamy, son of Matla Kumaraswamy, Son of late Matla Mysaiah, who is rightful owner of the land in question and the compensation was paid to him. **The petitioner is not entitled for any notice under Section 12(2) as alleged by him. The petitioner has not been paid any compensation for the land in question. Therefore he is not entitled to seek reference under Section 18 of the Land Acquisition Act to the civil Court.** The petition filed by the petitioner under Section 18 does not deserve any consideration. Hence the question of reference under section 18 of Land Acquisition Act to the Civil Court does not arise. The petitioner without having any title over the land is estopped from claiming adjudication under Section 18.”
(emphasis supplied)

The second respondent is not a party in person. He is represented by counsel and by a contingent of Government counsel who presumably settle pleadings after due application of legal principles and forensic skills to factual and legal assertions of Government respondents. In the counter affidavit filed on behalf of the second respondent, the theme is that since the petitioner's claim to ownership and possession of the lands and consequently to compensation for the acquired land was rejected by the second respondent himself and even without reference to the civil Court under Section 30 of the Act, the petitioner's disentitlement to title to the land and consequently to compensation is conclusively established and he has no *locus standi* to seek a reference to the civil Court under Section 18 of the Act. This extravagant assertion by the second respondent is presented before this Court for

consideration despite the processing of the counter affidavit by the learned Government Pleader. According to the second respondent only when an objection by the claimant is considered germane and merited by the Land Acquisition Officer and he is satisfied that his award is unsustainable (either as regards title of a claimant to the land or of entitlement to compensation or on the quantum of market value fixed), does the obligation to refer to the civil Court, under section 18 of the Act arise. A satisfaction of the land Acquisition Officer as to merits of a claimants objections is according to the second respondent, the condition precedent for making a reference under Section 18 of the Act. This is a perverse understanding and conception of the provisions of Section 18 of the Act and an extravagant assumption and assertion of the jurisdiction of a Land Acquisition Officer. A jurisdiction that a Land Acquisition Officer never had. It is unfortunate that notwithstanding an elaborate and extensive professional assistance for the State Government in land acquisition matters, such perverse counter affidavits pass muster and are filed for presentation before this Court. The counter affidavit is a sheer waste of stationery and an avoidable imposition on scarce of valuable judicial time.

The learned Government Pleader for Land Acquisition has at the hearing of the writ petition asserted that the petitioner's application dated 19-12-2005 seeking reference to the civil Court of his objections to the award dated 09-08-2005, is presented beyond the period of limitation, under Section 18 of the Act and therefore, his objections are not to be referred. This contention though orally urged requires to be examined.

The Proviso to Section 18(2) of the Act reads:-

"Provided that every such application shall be made:

- (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Clause (b) of the proviso has been substituted by A.P. Act 20 of 1959 with effect from 15-10-1959 and reads as under:

“in other cases, within two months from the date of service of the notice from the Collector under Section 12 sub-section(2).”

The second respondent has unequivocally asserted in the counter affidavit dated 14-07-2006 (quoted above), that notice under Section 12(2) of the Act was issued only to the awardee one Matla Kumaraswamy, who according to the second respondent was the rightful owner of the land in question. It is also the asserted case of the second respondent that the petitioner is not entitled to any notice under Section 12(2) of the Act. After a verification of the records, the learned Government Pleader for Land Acquisition admits that notice under Section 12(2) of the Act was not issued to the petitioner. It is stated that a copy of the award was furnished to the petitioner on 27-09-2005. Such communication of the award, is claimed by the learned Government Pleader, must be treated as notice under Section 12(2) of the Act.

It is not the charter of the judicial branch to contrive an extravagant interpretation to extricate the State from the self induced wanton errors of its agents and to do so to the detriment of a citizen's lawful interests. In a land acquisition context both the State and the citizen are litigating parties and are entitled to equal

treatment under law. The second respondent is an executor of certain specified aspects of the Act. There appears no justification to resort to extravagant interpretation merely to safeguard the State from the second respondent violation of the statutory provisions. Notice under section 12(2) of the Act is required to be made by a formal communication accompanied by a copy of the award. No such exercise is either pleaded, asserted or demonstrated to have been made. To the contrary the admitted and asserted position is that the petitioner is not entitled to and has not been issued a notice under section 12(2) of the Act. There is therefore in the eye of law, neither expressly nor by any compelling implication, a notice under Section 12(2) of the Act issued to the petitioner by the respondents. In the absence of such a factual event viz., issuance of a notice under Section 12(2) of the Act, the time has not begun to run either under clause (a) or (b) of the proviso to Section 18(2) of the Act. The petitioner's application dated 19-12-2005 is therefore within time and the assertion to contrary orally made on behalf of the respondents by the learned Government Pleader for Land Acquisition does not commend acceptance by this Court. It is accordingly rejected.

On the analysis above, the writ petition is allowed. The respondents are directed to refer the petitioner's objections dated 19-12-2005 to the civil Court expeditiously, and in any event, within a period of seven days from the date of receipt of a copy of this order. As the second respondent has chosen to file an affidavit which is wholly misconceived, extravagant and negligent, this Court considers it appropriate to award with costs of Rs.25,000/- (rupees twenty five thousand only); of which an amount of Rs.5,000/- (rupees five thousand only) shall be paid to the petitioner and an amount of Rs.20,000/- (rupees twenty thousand only) to the Secretary, A.P.

Legal Services Authority, within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is allowed as above, with costs.

11-09-2006

Note: A copy of this order be marked to the Secretary, A.P. State Legal Services Authority, for information and record.

B/o
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